APPENDIX D

CLOUD49 LLC SERVICES AGREEMENT

This Services Agreement ("Agreement") is made on _____ between **Cloud49 LLC**, an Alaska limited liability company, with a principle office at **6800 West Gate Blvd., Suite 132, Austin, TX 78745** ("Cloud49"), and _____, with its principle office at _____ ("Customer").

WHEREAS, Cloud49 is engaged in the business of providing a full range of information technology services; and

WHEREAS, Customer desires to retain Cloud49 to perform information technology services and functions; and

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties have agreed and do agree as follows:

AGREEMENT

1. **Contracted Services.**   This Agreement shall apply to the delivery of information technology services, support, and functions as further described in Statements of Work (SOW) that may be proposed and approved by the parties in accordance with DIR Contract No. DIR-TSO-2643. Any such approved SOW shall be incorporated herein by reference (the services and functions described in any SOW are hereafter referred to as the "Services"). In the event that the scope of the Services is expanded, revised, or modified, for any SOW incorporated herein, the parties shall prepare and sign an amended or new SOW (or change order), which likewise shall be attached hereto and incorporated herein by reference.   Absent the execution of a SOW, this Agreement does not, in and of itself, represent a commitment by Customer to receive any Services from Cloud49 or pay Cloud49 any fees. Services procured under this Agreement do not include Cloud Infrastructure as a Service, Platform as a Service, Cloud Broker or Cloud Assessment.

2. **Term of Agreement.**

    (a)   The term of this Agreement will commence on the Effective Date set forth above and will continue until terminated by either party as provided below ("Term"). In the event that the SOW provides for a different Term, the SOW Term will control for that specific SOW only.

    (b)   The Customer shall have the option to terminate this Agreement, without cause, by providing thirty (30) calendar days written notice of its intent to terminate the Agreement without cause.

    (c)   In the event that there is a continuing need for any Services identified in a SOW, after the expiration of this Agreement and Customer requests, in writing, to have Cloud49 complete the Services, this Agreement may be renewed for the period of time that it takes for the completion of such Services.

    (d)   The Agreement can be terminated for cause in accordance with Appendix A, Section 11 of DIR Contract No. DIR-TSO-2643.

3. **Fees and Payment Terms.**

    (a)   In exchange for the Services performed by Cloud49, as set forth in any SOW, Customer agrees to compensate Cloud49 at rates equal to or less than the maximum rates identified in DIR Contract No. DIR-TSO-2643 Appendix C – Pricing Index, as stated in the fee schedule set forth in a SOW. Customer will make all payments to Cloud49 in accordance with Appendix A, Section 8 to DIR contract No. DIR-TSO-2643.

(b)   In addition, Customer shall reimburse Cloud49 its actual out-of-pocket expenses as reasonably incurred by Cloud49 in connection with the performance of Services in accordance with Appendix A, Section 8 to DIR contract No. DIR-TSO-2643. Expenses for travel, materials, services, training and hardware may only be incurred by Cloud49 and charged to Customer if prior written approval from Customer has been obtained.

(c)   Late payment charges and billing disputes shall be handled in accordance with Appendix A, Sections 8 and 11 of DIR Contract No. DIR-TSO-2643.

4.   Independent Contractor.   In accordance with Appendix A, Section 10, A, 1, of DIR Contract No. DIR-TSO-2643, the parties enter into this Agreement as independent contractors and nothing within this Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the parties. All Cloud49 employees who are assigned to perform services at any Customer owned or leased facility shall be considered to be an employee of Cloud49 only and will not be considered an agent or employee of Customer for any purpose. Cloud49 will be solely responsible for payment of all compensation owed to its employees, including all applicable federal, state and local employment taxes and will make deductions for all taxes and withholdings required by law. In no event will any Cloud49 employee be eligible for or entitled to any benefits of Customer.

5.   Customer Responsibilities.   In addition to any obligations and responsibilities described in the SOW or elsewhere in this Agreement, Customer shall have shared responsibility with Cloud49 regarding the following:

(a)   To ensure that the necessary business and application knowledge is available and conveyed from the Customer's existing support team to Cloud49's support team.

(b)   Provide ready access to all appropriate locations, computing platforms, documentation (e.g., program source, copybooks, tables, subroutines) and personnel (i.e., end users and technical representatives) necessary to fully understand the current business systems and environments throughout the life of the engagement.

(c)   Provide at its facility, office space and equipment for Cloud49's on-site employees to utilize as necessary to support the Customer. Access will also be provided to the Customer's source libraries, test systems, and test data as necessary.

(d)   Provide external communications capability and/or access to its work facility to enable Cloud49's on-site project team to access the Customer's information technology systems remotely or after hours as required.

(e)   Customer shall assign an employee or representative to be present at the work facility for any after hours or weekend Services provided by Cloud49. .

(f)   Provide passwords, keys, MFAs, or any other relevant authentication mechanism to Cloud49 employees as needed.

(g)   Provide for the security of their respective premises, equipment, data and personnel in accordance with Appendix A, Section 10, I of DIR Contract No. DIR-TSO-2643.

6.   Warranty of Services.   Any warranty offered by Cloud49 for Services provided herein shall be set forth in the SOW. In the absence of any warranty language in the SOW, Cloud49 warrants that all Services performed pursuant to this Agreement will be performed in accordance with the general standards and practices of the information technology industry in existence at the time the Services are being performed. IN THE EVENT THAT THERE IS NO WARRANTY SET FORTH IN THE SOW, THE FOREGOING EXPRESS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED, ORAL OR WRITTEN, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT

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LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE EXTENT APPLICABLE.

7. **Equal Opportunity Employer.** Cloud49 is an Equal Opportunity Employer and does not discriminate in recruitment, hiring, transfer, promotion, compensation, development, and termination of its employees on the basis of race, color, sex, age, marital status, national origin, handicap, religious beliefs, veteran's status or other protected category as required by applicable Federal, State and local laws. Customer likewise represents that it will not discriminate in the referral or acceptance of Consultants hereunder on the basis of race, color, sex, age, marital status, national origin, handicap, religious beliefs, veteran's status or other protected category as required by applicable federal, state and local laws.

8. **Miscellaneous Clauses:**

(a) Non-Restrictive Relationship. Cloud49 may provide the same or similar services to other customers and Customer may utilize other information technology service providers that are competitive with Cloud49.

(b) Waiver. The rights and remedies provided to each of the parties herein shall be cumulative and in addition to any other rights and remedies provided by law or otherwise. Any failure in the exercise by either party of its right to terminate this Agreement or to enforce any provision of this Agreement for default or violation by the other party shall not prejudice such party's rights of termination or enforcement for any further or other's default or violation or be deemed a waiver or forfeiture of those rights.

(c) Notices. All notices required under or regarding this Agreement will be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, (confirmed by receipt) or (ii) three business days after being mailed via United States Postal Service, addressed to the following designated parties:

If to Cloud49:		If to Customer:	
Name	**Cloud49 LLC**	Customer Name	_____
Attention:	**Contracts Department**	Attention:	_____
Street Address	**6800 West Gate Blvd Suite 132**	Street Address	_____
City, State, Zip	**Austin, TX 78745**	City, State, Zip	_____

(d) Severability. If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.

(e) Captions. The section headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

(f) Entire Agreement. DIR Contract No. DIR-TSO-2643, Appendices A, B, C and Exhibits 1 and 2 to DIR-TSO-2643, this Agreement and the SOW(s) incorporated herein constitute the entire agreement between the parties and supersede any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Agreement.

(g) Amendments. This Agreement and the Exhibits to this Agreement may be amended only by an instrument in writing executed by the parties hereto. Any written work order submitted by Customer shall not amend the terms of this Agreement and will only be considered (1) a statement of the work to be performed; (2) set forth any deadlines or schedules; and (3) the additional fees to be charged, if any, for any out of scope work or services stated on the work order.

(h) Applicable Law. This Agreement is made under and will be construed in accordance with the law of Texas without giving effect to that state's choice of law rules. The forum for any dispute resolution activity or arbitration proceeding shall be Austin, Travis County, Texas.

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(i) <u>Successors and Third Party Beneficiaries.</u> This Agreement shall inure to the benefit of Cloud49 and Customer and any successors or assigns of Cloud49 and Customer. No third party, save and except for the Texas Department of Information Resources (DIR), shall have any rights hereunder.

Services Contract Signatory Page

  IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

By:

Cloud49 LLC

Signature: _____

Date: _____

Printed Name: _____

Title: _____

Customer _____

Signature: _____

Date: _____

Printed Name: _____

Title: _____